

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921. 1922

No. 44

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR,

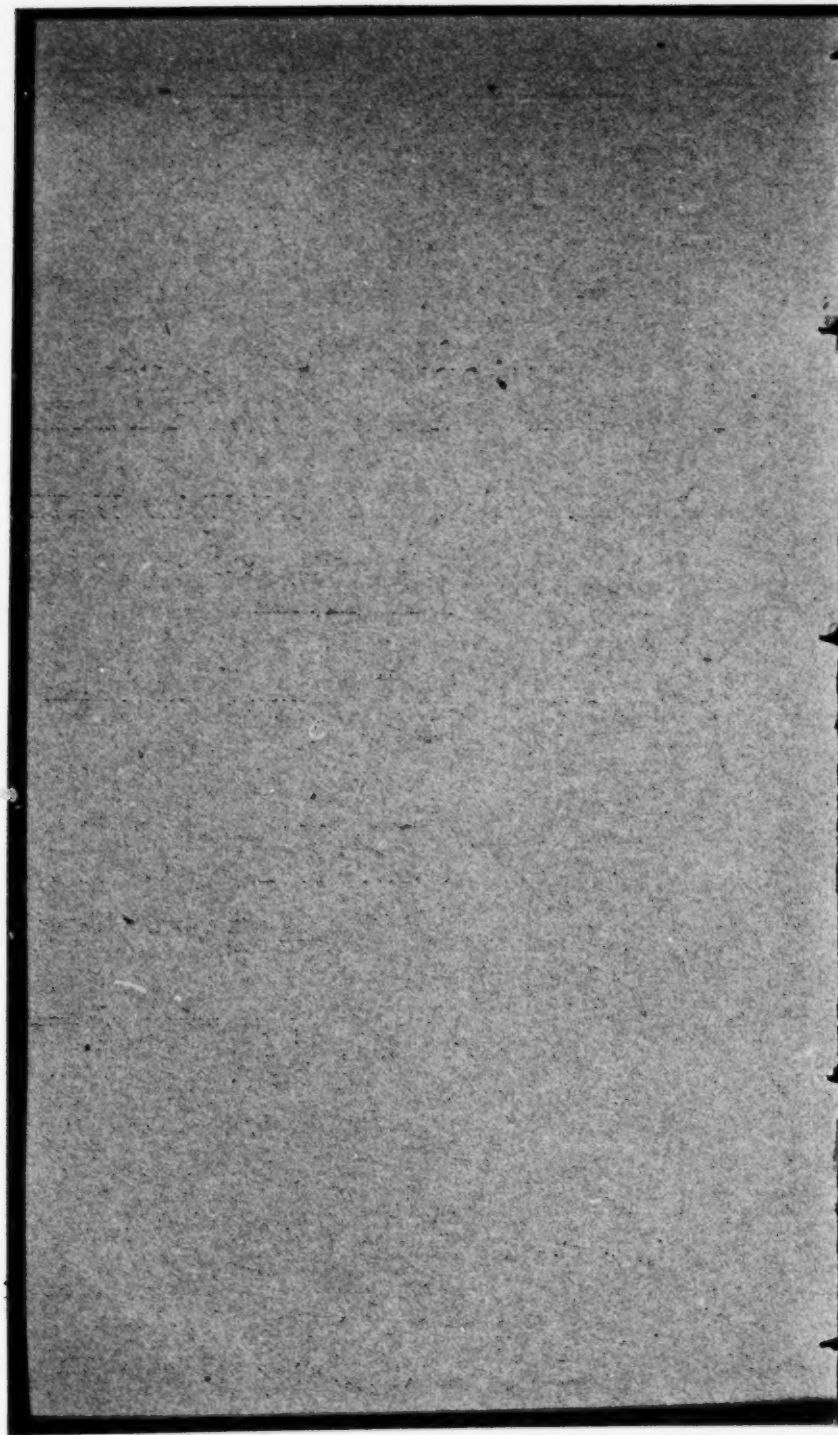
VS.

WONG SING.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH.

FILED MARCH 15, 1921.

(28159)



SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES OF AMERICA, PLAINTIFF
IN ERROR,

VS.

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INDEX.

	Original.	Print.
Order to file indictment.....	1	1
Indictment.....	2	1
Arraignment and plea.....	5	3
Order setting case for trial.....	5	4
Order plea withdrawn; demurrer.....	6	4
Judgment.....	6	4
Petition for writ of error.....	7	5
Assignment of errors.....	8	5
Certificate of district judge.....	9	6
Præcipe for record.....	11	7
Writ of error.....	13	8
Citation.....	14	9
Clerk's certificate.....	15	9

1 UNITED STATES OF AMERICA,
District of Utah, ss:

At a regular stated term of the District Court of the United States for the District of Utah, central division, begun and held in the court room in the Federal Building at Salt Lake City, on the 8th day of November, in the year of our Lord nineteen hundred and twenty, and the one hundred and forty-fifth of the Independence of the United States of America.

Present: Honorable Tillman D. Johnson, United States district judge for the district of Utah.

TRANSCRIPT OF THE RECORD.

UNITED STATES OF AMERICA	} 6083. Criminal.
<i>vs.</i>	
WONG SING, DEFENDANT.	

Order to file indictment.

Made and entered in minute book said court on the 21st day of August, 1920, which is as follows:

In the matter of report of true bills of indictment by grand jury, April term, 1920.

At this 21st day of August, 1920, come the members of the grand jury for the April term, 1920, of this court, at Salt Lake City, empaneled and sworn to inquire as to all matters within and for
 2 the entire district of Utah, and by their foreman, in open court, present the following true bill of indictment, to wit:

THE UNITED STATES	} Indictment for violation act December 17, 1914.
<i>vs.</i>	
WONG SING.	

(Indorsed: A true bill. Norman Lee, foreman grand jury.)

And thereupon it is ordered that the same be filed by the clerk of this court.

Indictment.

Filed in said court on the 21st day of August, 1920, which is in words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Utah, Central Division.*
 No. 6083. Criminal.

In the District Court of the United States of America, within and for the central division of the district of Utah, in the eighth judicial circuit.

First count.

The grand jurors of the United States of America, drawn from the territory comprising the northern and central divisions of the district of Utah, and sitting in the central division of said district, in the term beginning the twelfth day of April, in the year nineteen hundred and twenty, being first duly impaneled, sworn and charged by said court to inquire within and for the said district of Utah, upon their oaths do present and say:

That, heretofore, to wit, on or about the 14th day of May, A. D. 1920, at about the hour of ten o'clock p. m. of said day, at the building and premises known and described as No. 358 West Second South Street, Salt Lake City, in the State and central division of the district of Utah, and within the jurisdiction of this court, one

3 Wong Sing, whose other and true name is to the grand jurors unknown, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously have in his possession and under his control, certain derivatives and preparations of opium and coco leaves, to wit, morphine and cocaine, the exact quantity thereof being to the grand jurors unknown; he, the said Wong Sing, then and there having in his possession the said morphine and cocaine for the purpose of sale and distribution; he, the said Wong Sing, being then and there not registered under the provisions of the act of Congress approved December 17, 1914, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, sell, distribute, or give away opium or coco leaves, their salts, derivatives, or preparations, and for other purposes," and its amendments; and he, the said Wong Sing, not having then and there, or theretofore, or at all, paid the special tax provided by said act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second count.

And the grand jurors of the United States of America aforesaid, upon their oaths as aforesaid, do further find and present:

That heretofore, to wit, on or about the 14th day of May, A. D. 1920, at about the hour of ten o'clock p. m. of said day, at the building and premises known and described as No. 358 West Second South Street, Salt Lake City, in the State and central division of the district of Utah, and within the jurisdiction of this court, one Wong Sing, whose other and true name is to the grand jurors unknown, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously purchase from a person or persons to the grand jurors unknown, certain derivatives and preparations of opium and coco leaves, to wit, morphine and cocaine, the exact quantity thereof being to the grand jurors unknown, said drugs so purchased

4 not being then and there in the original stamped packages, or from the original stamped packages; he, the said Wong Sing, not having then and there obtained said drugs from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner, registered under the provisions of the act of Congress approved December 17, 1914, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, deal in, compound, sell, distribute, or give away opium or coco leaves, their salts, derivatives, or preparations, and for other purposes," and its amendments; and the said purchase at the time and place aforesaid, not being by a patient from a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice; and he, the said Wong Sing, not being then and there registered under the provisions of the said act of Congress, and not having then and there, or theretofore, or at all paid the special tax provided by said act: contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) NORMAN LEE,
Foreman of the Grand Jury.

(Signed) ISAAC BLAIR EVANS,
United States Attorney.

(Signed) HENRY D. MOYLE,
Assit. United States Attorney.

No. 6083. United States District Court, District of Utah.

5 The United States vs. Wong Sing. Indictment for vio. act December 17, 1914. A true bill. (Signed) Norman Lee, foreman grand jury. Filed Aug. 21, 1920. (Signed) John W. Christy, clerk. (Signed) Isaac Blair Evans, U. S. Attorney.

Order, arraignment, and plea.

Made and entered in said court on the 9th day of September, 1920, which being entitled in this cause is as follows:

At this day comes Isaac Blair Evans, United States attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper person, and by N. W. Sonnedecker, his attorney, also comes. And defendant is brought to the bar of the court for arraignment, and upon inquiry saith that his true name is Wong Sing, and by his attorney he waives the reading of this said indictment to him, and he is required to plead thereto. Whereupon he answereth and saith that he is not guilty in manner and form as in and by this said indictment he stands charged. And of this he puts himself upon the country and the said United States attorney doth the like.

Order setting case for trial.

Made and entered in said court on the 10th day of December, 1920, which being entitled in this cause is as follows:

- 6 At this day, on motion of Isaac Blair Evans, United States attorney, it is ordered by the court that this cause be set down for trial on the 11th day of January, 1921.

Order plea withdrawn; demurrer.

Made and entered in said court on the 12th day of January, 1921, which being entitled in this cause, is as follows:

At this 12th day of January, 1921, comes Henry D. Moyle, assistant United States attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper person, and by N. W. Sonnedecker, his attorney, also comes. And by leave of court defendant withdraws the plea of not guilty heretofore by him entered to this indictment, and in open court demurs to the said indictment for failure to state an offense, and being insufficient, and the same is argued by counsel, and the court, being well advised in the premises, doth sustain said demurrer. And the United States attorney having elected in open court to abide by and to stand on said indictment, it is ordered by the court that said defendant be discharged and that he and his sureties, on his recognition herein, be released and exonerated from all liability thereon.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is considered, ordered, and adjudged by the court that of and from the premises in this said indictment specified said defendant go hence hereof without day.

Judgment.

Filed and entered in the judgment book of said court on the 12th day of January, 1921, which, being entitled in this cause, is as follows:

- In this cause, on the 12th day of January, 1921, plaintiff, appearing by Isaac Blair Evans, United States attorney, and the defendant, by N. W. Sonnedecker, also appearing, and
7 by leave of court defendant withdraws the plea of not guilty heretofore by him entered to this indictment and in open court demurs to the said indictment for failure to state an offense, and being insufficient, and the same is argued by counsel, and the court, being well advised in the premises, doth sustain said demurrer. And the United States attorney having elected in open court to abide by and to stand on said indictment, it is ordered by the court that said defendant be discharged and that he and his sureties, on his recognition herein, be released and exonerated from all liability thereon.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is considered, ordered, and adjudged by the court that of and from the premises in this said indictment specified, said defendant go hence hereof without day.

Petition for writ of error and allowance.

Filed in said court on the 10th day of February, 1921, which being entitled in this court and cause is as follows:

And now comes the United States of America, plaintiff herein, and says:

That on the twelfth day of January, in the year of our Lord one thousand nine hundred and twenty-one, during the November A. D. 1920 term of said court, the above-mentioned district court entered a judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States
8 for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) ISAAC BLAIR EVANS,
United States Attorney for the District of Utah,
Attorney for Plaintiff.

Allowed, Feb. 10, 1921.

(Signed) TILLMAN D. JOHNSON, *District Judge.*

Filed February 10, 1921.

(Signed) JOHN W. CHRISTY, *Clerk.*

Assignment of errors.

Filed in said court on the 10th day of February, 1921, which being entitled in said court and cause is as follows:

The plaintiff in this action, in connection with the petition for a writ of error, makes the following assignment of errors, which plaintiffs avers exists, to wit:

First. The court erred in sustaining the demurrer to the first count of the indictment.

Second. The court erred in sustaining the demurrer to the second count of the indictment.

Third. The court erred in his construction of the language of section 1006 of the revenue act of February 24, 1919, c. 18.

Fourth. The court erred in entering judgment in favor of defendant and against the plaintiff.

Wherefore, plaintiff prays that the judgment of said district court be reversed.

(Signed) ISAAC BLAIR EVANS,
United States Attorney for the District of Utah,
Attorney for Plaintiff.

Filed February 10, 1921.

(Signed) JOHN W. CHRISTY, *Clerk.*

Order allowing writ of error.

Filed and entered in said court on the 10th day of February, 1921, which being entitled in this court and cause, is as follows:

This tenth day of February, A. D. 1921, during the November, A. D. 1920, term of said court, comes the plaintiff by Isaac Blair Evans, Esquire, United States attorney for the district of Utah, plaintiff's attorney, and files herein and presents to the court plaintiff's petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by plaintiff, praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error; but plaintiff according to law is relieved from giving bond.

This tenth day of February, A. D. 1921.

(Signed) TILLMAN D. JOHNSON,
*Judge of the District Court of the United
States for the District of Utah.*

Filed and entered February 10, 1921.

(Signed) JOHN W. CHRISTY, *Clerk.*

Certificate of district judge.

Filed in said court on the 10th day of February, 1921, which being entitled in this court and cause, is as follows:

The foregoing cause came on regularly for trial on the twelfth day of January, A. D. 1921, whereupon defendant, by his counsel, moved orally to withdraw the plea of not guilty theretofore by
10 him entered to the indictment, and leave to withdraw the plea having been granted, defendant by his counsel orally demurred to the indictment upon the ground that neither of the two counts of said indictment stated facts sufficient to constitute an offense against the United States.

The first count of the indictment is based upon section eight of the act of Congress of December 17, 1914, commonly called the Harrison Anti-Narcotic Act. I sustained the demurrer to this count upon the authority of United States vs. Jin Fuey Moy, 241 U. S., 394.

The second count of the indictment is based upon the amended Harrison Anti-Narcotic Act contained in section 1026 of the revenue act of February 24, 1919, C. 18 (40 Stat., 1130). The language upon which the second count of the indictment is predicated reads:

"It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package * * *."

I construed the word "person" in the foregoing language to mean

the persons enumerated in the first paragraph of section 1006, namely, "every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof * * *." I sustained the demurrer to the second count of the indictment because it contained no appropriate allegation giving effect to the above construction placed upon the word "person" and hence fell within the rule in the *Jin Fuey Moy* case; otherwise said amendment would be unconstitutional.

I, the undersigned, judge of the District Court of the United States in and for the District of Utah, hereby certify that in sustaining the demurrer to the second count of the indictment the sole question considered and determined by the court was the proper construction to be placed upon the word "person" in the language of the statute above mentioned beginning, "It shall be unlawful for any person to purchase," etc., upon which said second count was based, and which is hereinbefore quoted more fully, and that treating the demurrer as presenting this question of construction, the demurrer was sustained only for the reason above stated.

This certificate is made a part of the record and will be certified and sent up as part of the proceedings.

This tenth day of February, A. D., 1921.

(Signed) **TILLMAN D. JOHNSON,**
Judge of the United States District Court
in and for the District of Utah.

Filed February 10, 1921.

(Signed) **JOHN W. CHRISTY, Clerk.**

Procipe for transcript of record.

Filed in said court on the 24th day of February, 1921, which being entitled in this court and cause, is as follows:

The clerk of court will prepare transcript of record in the above entitled cause upon writ of error to the Supreme Court of the United States, and include therein the following:

1. Order to file indictment.
2. The indictment.
3. The arraignment and plea.
4. Order setting case for trial January 11, 1921.
5. Order to withdraw plea and leave granted to file demurrer.
6. The judgment.
7. Petition for writ of error.
8. Assignment of errors.
9. Order allowing writ of error.
- 12 10. Writ of error.
12. Citation in error.
13. Judge's certificate.

14. Præcipe for transcript.

15. Clerk's certificate.

(Signed)

ISAAC BLAIR EVANS,
United States Attorney,
Attorney for Plaintiff.

Due service of the within præcipe is hereby admitted at Salt Lake City, Utah, in said district of Utah, this 24th day of February, A. D., 1921.

(Signed)

N. W. SONNEDECKER,
Attorney for Defendant in Error.

Filed Feby. 24, 1921.

(Signed)

JOHN W. CHRISTY, *Clerk.*

13 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for the District of Utah, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America, plaintiff, and Wong Sing, defendant, a manifest error has happened, to the great damage of the said United States of America, as by plaintiff's complaint appears. We being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the fourth day of April next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, that of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, the 10th day of February, in the year of our Lord one thousand nine hundred and twenty-one, and of the Independence of the United States of America the one hundred and forty-fifth year.

[SEAL.]

JOHN W. CHRISTY,

Clerk of the District Court of the United States
for the District of Utah.

Allowed this February 10, A. D. 1921, by

TILLMAN D. JOHNSON,

United States District Judge for the District of Utah.

14 In the United States District Court for the District of Utah.

UNITED STATES OF AMERICA, PLAINTIFF
in error,

vs.

WONG SING, DEFENDANT IN ERROR.

Citation. No. 6083. Criminal.

UNITED STATES OF AMERICA, ss.:

To Wong Sing, defendant in error above named, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington on the fourth day of April next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Utah, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected and why justice should not be done to the parties in that behalf.

Witness the honorable Edward Douglas White, Chief Justice of the United States, this 10th day of February, A. D. 1921, and of the Independence of the United States the one hundred and forty-fifth year.

TILLMAN D. JOHNSON,
United States District Judge.

Attest:

[SEAL.]

JOHN W. CHRISTY, *Clerk.*

Due service of the within citation is hereby admitted at Salt Lake City, Utah, in said district of Utah, this 10th day of February, A. D. 1921.

N. W. SONNEDECKER,
Attorney for Defendant in Error.

Lodges in clerk's office February 10, 1921.

JOHN W. CHRISTY, *Clerk.*

15

Certificate of Clerk.

UNITED STATES OF AMERICA,

District of Utah, ss.:

I, John W. Christy, clerk of the District Court of the United States for the District of Utah, do hereby certify that the foregoing pages numbered from one to twelve, both inclusive, contain a full, true, complete, and correct copy and transcript of the record, proceedings, and papers called for in the præcipe filed herein for a transcript of the record in that certain cause wherein the United States of America is plaintiff and Wong Sing is defendant, numbered 6083, criminal, on the dockets of said court, as full, true, com-

plete, and correct as the originals thereon now remain on file and of record in my office, omitting the following papers and proceedings not specified in said *præcipe*, to wit:

Oct. 30, 1920. Order set for trial November 23, 1920.

Nov. 23, 1920. *Præcipe*, subpoena for witnesses, and return order continued for trial.

I further certify that the original writ of error and original citation in this cause are hereunto annexed and transmitted herewith.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Salt Lake City, in said district, this 5th day of March, in the year of our Lord nineteen hundred and twenty-one and the one hundred and forty-fifth year of the Independence of the United States of America.

JOHN W. CHRISTY, *Clerk*,

United States District Court, District of Utah.

(Indorsed on cover: File No. 28159. Utah, D. C. U. S. Term No., 252. The United States of America, plaintiff in error, vs. Wong Sing. Filed March 15th, 1921. File No. 28159.)

